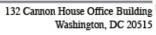


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H.R. 976— Children's Health Insurance Program Reauthorization Act—Vote to Sustain Presidential

H.R. 976—Children's Health Insurance Program Reauthorization Act (Rangel, D-NY)

Order of Business: H.R. 976 was vetoed by President Bush on October 3, 2007. This bill was originally passed in the House by a vote of 265 - 159 on September 25, 2007. The vote on H.R. 976 is to either sustain or override the President's veto. For additional information on the process in the House regarding vetoed bills, please see the "Process for a Vetoed Bill" section below.

Summary: H.R. 976 reauthorizes and significantly expands the State Children's Health Insurance Program (SCHIP), while increasing cigarette taxes to supposedly offset the bill's costs. The legislation follows closely the Senate-passed version of SCHIP reauthorization, expanding the program but discarding much of the Medicare-related provisions included in the House-passed legislation. *Highlights* of the bill are as follows:

Cost: H.R. 976 provides \$34.9 billion over five years and \$71.5 billion over ten years in new mandatory spending—this spending is on top of the \$25 billion over five years that would result from a straight extension of the program. The House-passed version provided \$47.4 billion over five years and \$128.7 billion in new SCHIP spending (as well as billions of non-SCHIP spending).

The new spending is *partially* offset by increasing taxes on tobacco products (see below). However, this CBO score overlooks a major gimmick which the bill employs to lower its costs. The bill dramatically lowers the SCHIP funding in the fifth year by 80%, from \$14.25 billion in the first six months to \$1.75 billion. In all likelihood, such a reduction would not actually take effect, which would make this an effort to generate unrealistic savings in order to comply with PAYGO rules. To that end, H.R. 976 is technically compliant with PAYGO.

Block Grant: Under current law, a federal block grant is awarded to states, and from the total annual appropriation, every state is allotted a portion for the year according to a

statutory formula. The bill extends the SCHIP block grants from FY 2008-12. In addition, the bill also creates a new Child Enrollment Contingency Fund capped at 20% of the total annual appropriation, for states that exhaust their allotment by expanding coverage, and Performance Bonus Payments comprised of a \$3 million lump sum in FY 2008 plus unspent SCHIP funds in future years.

Encourages Spending: H.R. 976 shortens from three to two years the amount of time a state has to spend its annual SCHIP allotment. Under current law, states are given three years to spend each year's original allotment, and at the end of the three-year period, any unused funds are redistributed to states that have exhausted their allotment or created a "shortfall," i.e. making commitments beyond the funding it has available. In addition, the bill establishes a process through which any unspent funds would be redistributed to any states with a shortfall. Some conservatives may be concerned that this process provides incentives both for states to spend their allotment quickly and to extend their programs beyond their regular allotments into shortfall, so as to be relieved by the unspent funds of other states or the new Contingency Fund (see above).

Expansion to Higher Incomes: Under current law, states can cover families earning up to 200% of the Federal Poverty Level (FPL) or \$41,300 for a family of four in 2007 *or* those at 50% above Medicaid eligibility. However, states have been able to "disregard" income with regard to eligibility for the program, meaning they can purposefully ignore various types of income in an effort to expand eligibility. For instance, New Jersey covers up to 350% of FPL by disregarding any income from 200-350%, allowing them to cover beyond 200% with the enhanced federal matching funds that SCHIP provides.

As of 2010, H.R. 976 increases the eligibility limit to 300% of FPL or \$61,950 for a family of four but also continues the current authority for states to define and disregard income. States which extend coverage beyond 300% of FPL would receive the lower Medicaid match rate. The bill also grandfathers states with an approved state plan amendment (or a state about to submit such an amendment in compliance with state law) that already covers those above 300% of poverty. This provision is for New Jersey and New York (seeking to cover 400% of FPL or \$82,600 for a family of four). In addition, Section 116 of the bill overturns CMS' current policy of requiring states to ensure that 95% of the eligible children in their state below 250% of FPL are enrolled before expanding coverage to higher incomes.

Practically speaking, H.R. 976 places no limit on SCHIP eligibility since states can always manipulate the definition of income to expand coverage, and the Centers for Medicare and Medicaid is limited in its ability to reject such determinations. Proponents of the bill may argue that this is not much different than current law, and that the bill merely increases the coverage limit from 200% of FPL to 300%. However, some conservatives may be concerned that Congress is passing up an important opportunity to tailor and prioritize SCHIP for *low-income* children by continuing the current practice for income disregards.

Adult Coverage: Under current law, some states cover *nonpregnant*, *childless adults*—these states have received waivers in the past in an effort to expand health insurance to uninsured populations, even though the program was intended for children. H.R. 976 would prohibit any further waivers but would provide continued funding for existing coverage of such adults through FY 2008. Beginning in FY 2009, funding for nonpregnant childless adults will be capped at FY 2008 levels, but states would receive the lower Medicaid match and be limited to only covering those already enrolled.

Current law also provides that states may choose whether or not to offer coverage to *pregnant women* (which results in coverage for both the baby and the mother), and currently, many do offer such coverage, after receiving waivers from CMS. H.R. 976 provides a new avenue for states to cover pregnant women through a state plan amendment *if* the state meets the following criteria:

- covers pregnant women under Medicaid up to 185% of FPL
- covers children under SCHIP up to 200% of FPL
- eligibility levels for pregnant women are not lower than state's Medicaid level (taking into consideration income disregards)
- covers lower income women before higher income women
- does not deny benefits to a pregnant women due to pre-existing conditions
- does not have a waiting list, enrollment cap or limitation on children's coverage
- does not cover pregnant women at higher eligibility levels than children

SCHIP coverage for a pregnant woman would be transferred to the child upon birth and the child would be *automatically* enrolled in SCHIP until age 1, assuming that the mother's eligibility is proof of infant's eligibility. In addition, this provision would allow states who currently provide coverage to pregnant women (either by a waiver or by regulation) to continue providing such coverage (including postpartum services up to 90 days). This bill also mandates that there be no cost-sharing for pregnancy-related benefits.

Similar to its treatment of nonpregnant childless adults, H.R. 976 would prohibit any new waivers to cover the *parents of eligible children*, and current coverage will transition to the lower Medicaid match rate. Current coverage of parents will continue through FY 2009, after which point states can only continue coverage at the SCHIP match if they meet the following criteria:

- the state falls into the bottom 1/3 of all states with regards to uninsured low-income children
- the state proves that they have improved their outreach for eligible children
- the state is eligible for a bonus for increased enrollment

If a state does not meet these criteria, they will only receive the Medicaid match rate for currently covered parents.

Private Insurance Crowd-Out: According to CBO, under H.R. 976, 2 million children will shift from receiving private health insurance to government health insurance. This

means that they may get worse health care service and become increasingly dependent on the federal government. In addition, as H.R. 976 begins to reduce SCHIP funding in 2012 (if such a reduction is actually intended, see above), some have noted that states may shift these children made newly eligible for a government program into Medicaid. This phenomenon takes place despite a provision in H.R. 976 to offer a premium assistance subsidy under SCHIP for employer-sponsored coverage. A qualifying employer-sponsored plan would have to contribute at least 40 percent of the cost of any premium toward coverage.

Legal Immigrants and Citizenship Certification: H.R. 976 states that "nothing in this Act allows Federal payment for individuals who are not legal residents." However, the bill weakens existing law by removing the documentation requests under the Deficit Reduction Act (DRA), specifically the burden that citizens and nationals provide documentation proving their citizenship in order to be covered under Medicaid and SCHIP. Instead, the bill would require that a name and Social Security number be provided as documentation of legal status to acquire coverage and that those names and Social Security numbers be submitted to the Secretary to be checked for validity. If a state is notified that a name and Social Security number do not match, the state must contact the individual and request that within 90 days the individual present satisfactory documentation to prove legal status. During this time, coverage for the individual continues. If the individual does not provide documentation within 90 days, he is "disenrolled" from the program but maintains coverage for another 30 days (after the 90 days given to come up with proper documentation), giving the individual up to four months of coverage on a false identity.

Some conservatives may be concerned that a Social Security number and name are not enough for a proof of citizenship and that more documents should be required to determine eligibility. For instance, according to a recent letter from Social Security Administration Commissioner Michael Astrue, a Social Security number would *not* keep someone from fraudulently receiving coverage under Medicaid or SCHIP (if they claimed they were someone they were not).

In addition, this bill may allow illegal aliens the opportunity to enroll falsely in Medicaid or SCHIP and retain coverage for an undetermined amount of time before they are disenrolled for lack of proper identification.

Tax Increase: H.R. 976 increases the cigarette tax by 61 cents to \$1 per pack, and the cigar tax up to \$3 per cigar, supposedly generating \$35.5 billion over five years and \$71.1 billion over ten years. It is important to note that this is a substantial tax increase on low-income individuals in order to pay for an expansion of SCHIP to higher income levels, which it was not initially designed for. In addition, this revenue source is constantly declining as fewer and fewer individuals smoke, and since placing a tax on cigarettes will likely deter sales, some have questioned the efficacy of the offset. According to study by the Heritage Foundation, "To produce the revenues that Congress needs to fund SCHIP expansion through such a tax would require 22.4 million new smokers by 2017." The bill also changes the timing for some corporate estimate tax payments.

Outreach and Enrollment Activities: From FY 2008 to FY 2012, H.R. 976 provides \$100 million in mandatory funding for grants to eligible institutions to conduct outreach and enrollment efforts for Medicaid and SCHIP. Within this amount, 10 percent of the funds are set aside for a national enrollment campaign and 10 percent of funds are set aside for outreach and enrollment efforts for Native American children. Among other things, the funds (\$10 million) set aside for a national enrollment campaign could be used for a "joint public awareness outreach initiatives with the Secretary of Education and the Secretary of Labor regarding the importance of health insurance to building strong communities and the economy."

In addition, the bill encourages states to take steps to increase the enrollment of Native Americans residing near or in reservations by exempting states from the 10 percent limit on administrative expenses to the extent the administrative expenses are used to increase enrollment of Native Americans in SCHIP and Medicaid. H.R. 976 also allows states to rely on a new Express Lane Agency option to determine eligibility standards for the Medicaid and SCHIP programs. This, among other things, allows states to make a determination for an individual's eligibility in the Medicaid and SCHIP program based on the individual's eligibility for TANF, food stamps, the McKinney Homeless Assistance Act, and other federal programs.

Expanded Benefits: H.R. 976 also expands the benefits that are mandated under SCHIP and Medicaid. For instance, Medicaid-eligible children would be entitled to dental benefits "necessary to prevent disease and promote oral health, restore oral structures to health and function, and treat emergency conditions." In addition, if a state child health plan provides for mental health benefits, then the plan must ensure that the financial requirements and treatment limitations on mental health or substance abuse benefits are no more restrictive than what is applied to medical and surgical benefits covered by the plan.

<u>TMA and Title V Abstinence</u>: Unlike the House-passed version, H.R. 976 does not extend Transitional Medicaid Assistance or Title V Abstinence, which are scheduled to expire September 30, 2007.

Other Provisions:

- ➤ Disregarding of Pension Contributions as Income. The bill disregards "extraordinary employer pensions" as income. According to CMS, only one state would fall into this category—Michigan, due to the auto manufacturers. Some conservatives may view this as an authorizing earmark.
- ➤ **Diabetes Demonstration Project.** The bill authorizes a total of \$15 million over five years to fund demonstration projects in up to 10 states, with the aim of promoting lifestyle changes that will reduce the incidence of type 2 diabetes.

- ➤ Increased Funding for Current Population Survey. The Current Population Survey collects data for the Census Bureau, primarily concerning the U.S. labor force. H.R. 976 would increase funding for this program from \$10 million to \$20 million a year for the purpose of collecting better data on children enrolled in health coverage.
- ➤ Name Change. H.R. 976 renames the program the "Children's Health Insurance Program."
- ➤ Medicaid Disproportionate Share Hospital (DSH) Allotment for TN and HI. The bill sets the DSH allotments for Tennessee at \$30 million a year beginning in FY 2008, and sets the DSH allotment increases for Hawaii, beginning in FY 2009 and thereafter, as the allotments for low DSH states. Some conservatives may view these provisions as authorizing earmarks.

Process for a Vetoed Bill:

- ➤ The House and Senate pass an identical bill.
- The President vetoes the bill and sends a veto message to the House.
- ➤ The Speaker "lays a veto message before the House on the day it is received...When the message is laid before the House, the question on passage is considered as pending."
- Consideration of a vetoed bill (a privileged matter) generally takes precedence over other floor matters (it can interrupt other floor business), *except* in certain specific instances: a motion to adjourn, a question of privilege under the Constitution (such as a blue-slip resolution), and unfinished business with the previous question order (such as a bill with the previous question ordered to passage on the day before, but the House adjourned before voting on passage of the bill).
- ➤ If the House does *not* wish to proceed immediately to reconsider the bill, three motions are in order:
 - 1) motions to lay on the table (if passed, a motion to take it from the table is in order at any time);
 - 2) motions to postpone consideration to a day certain (it becomes unfinished business on that day); or
 - 3) motion to refer to committee (a motion to discharge is highly privileged and in order at any time).
- ➤ If none of the above three motions are offered, the House proceeds to debate the override question under the hour rule and then votes on the question of overriding the veto.
- ➤ If the veto is sustained, the bill is referred to committee. Since the bill has been rejected (when the veto was sustained), a motion to take the bill from committee is not privileged.

<u>Note</u>: It is not clear what the options are after the veto is sustained and referred to committee. Also, according to the Parliamentarian's office, neither the House nor

Senate is *required* to act on a vetoed bill (there were instances during the 106th Congress when the House and Senate chose not to act upon a vetoed bill).

The Vote on H.R. 976 – Sustaining the Presidential Veto:

When a vote is requested on a vetoed bill, the question is: "Will the House, on reconsideration, pass the bill, the objections of the President to the contrary notwithstanding." Thus, it is as if the bill is up for normal consideration again, only the threshold for passage is now 2/3 of those voting. If a member opposes the bill and voted NO when it was originally considered and passed, then he would vote NO again (still opposing the bill, thereby voting to sustain the President's veto).

<u>Does the Bill Expand the Size and Scope of the Federal Government?</u>: Yes, the bill would expand the SCHIP program by \$35 billion over five years and loosen the program's eligibility requirements.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: A formal CBO cost estimate with such information is not yet available.

<u>Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax</u>

<u>Benefits/Limited Tariff Benefits?</u>: H. Res. 675 waives clause 9 of Rule XXI requiring a list of all earmarks contained within and their sponsor.

<u>Constitutional Authority</u>: While no updated committee report is available for H.R. 976, the committee report accompanying the original House passed version (H.R. 3162) by the Committee on Ways and Means reads, "With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's Action in reporting this bill is derived from Article I of the Constitution, Section 8 ('The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises...'), and from the 16th Amendment to the Constitution," but does not cite a specific clause.

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